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Fleit Gibbons Gutman Bongini & Bianco PL
21355 EAST DIXIE HIGHWAY
SUITE 115
MIAMI FL 33180

In re Application of
Mechoulam et al.
Application No.: 10/597,166
PCT No.: PCT/IL2005/000053
Int. Filing Date: 14 January 2005
Priority Date: 15 January 2004
Attorney Docket No.: 7056-X09-004
For: Therapeutic Use Of Quinonoid
Derivatives Of Cannabinoids

DECISION

This is in response to the renewed petition to revive under 37 CFR 1.137(a), and petition under 37 CFR 1.137(b), filed on 03 February 2010.

DISCUSSION

Petition Under 37 CFR 1.137(a)

In a Decision mailed on 11 January 2010, the petition under 37 CFR 1.137(a) filed on 16 November 2009 was dismissed, without prejudice, because counsel has not provided an adequate showing that the entire delay in filing the required reply was "unavoidable" within the meaning of 37 CFR 1.137(a).

In response, petitioner proposes a "case for revival of application." Petitioner argues that "there is no indication in the electronic records... that the Office ever informed Applicants that the Declaration filed on December 5, 2008 was unacceptable." Review of the Decision mailed on 07 November 2008 reveals that it treated the declaration filed on 11 April 2007, found said declaration defective, and provided a period for response analogous to that which would have been set by a Notification of Defective Response (Form PCT/DO/EO/916). Thus, the Decision mailed on 07 November 2008 procedurally took the place of a Notification of Defective Response. As such, applicants were required to perfect their response within the time period set by that Decision; applicants were not entitled to further opportunities to respond beyond that period. Since applicants did not file an acceptable oath or declaration within the period for response indicated by the Decision mailed on 07 November 2008, the international application properly became abandoned with respect to the national stage in the United States.

Petitioner also argues that "the application was abandoned before Applicants' Representatives could properly take action." Review of the record reveals that the application became abandoned for failure to respond as of midnight on 23 February 2009 (since 21 February 2009 was a Saturday), while a Power of Attorney appointing present counsel was filed on 17 March 2009.¹ To the extent that the application was in fact abandoned prior to the date that present counsel assumed responsibility for the representation, applicants are nonetheless bound by the actions or inactions of their duly appointed representatives. Thus, assuming *arguendo* that present counsel was not empowered prior to the date of abandonment, the failure of

¹ The record includes a letter from Thomas Marsteller, Jr. To Martin Fleit, dated 24 February 2009, indicating that the application was being transferred to Mr. Fleit at that time.

applicants and/or their previous representatives to file an acceptable response within the period for reply nonetheless resulted in this international application becoming abandoned with respect to the national stage in the United States. Even if present counsel was not empowered to prevent such abandonment, the failure of applicants or applicants' earlier representatives to timely reply does not constitute unavoidable delay within the meaning of 37 CFR 1.137(a).

Petition Under 37 CFR 1.137(b)

Applicants seek alternative relief under 37 CFR 1.137(b).

Petitioner states that "the entire delay in filing the required reply (corrected Declaration) from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional." Said statement is accepted in satisfaction of 37 CFR 1.137(b)(3).

A review of the application file reveals that applicant has paid the petition fee. The required reply (in the form of the declaration) has been filed. No terminal disclaimer is required. Therefore, the request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the national stage in the United States of America.

DECISION

The petition under 37 CFR 1.137(a) is **DISMISSED**, without prejudice.

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application is being forwarded to the Office of Patent Application Processing for further processing, including updating its status in PALM to pending, not abandoned. Its date under 35 U.S.C. 371(c)(1), (2) and (4) is **16 November 2009**.

/George Dombroske/
George Dombroske
PCT Legal Examiner
Office of PCT Legal Administration
Tel: (571) 272-3283